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SMITH'S FOOD & DRUG CENTERS, INC.

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

BIONCA WALKER, an individual,

Plaintiff,

Case No.

v.

SMITH'S FOOD AND DRUG CENTERS,
INC. a Foreign Corporation, doing business as
SMITH'S; DOE STORE MANAGER I
through X; DOE STORE EMPLOYEE I
through X; DOE LANDOWNER I through X;
DOE PROPERTY MANAGER I through X;
DOE MAINTENANCE EMPLOYEE I
through X; ROE OWNER XI through XX;
ROE LANDOWNER XI through XX; ROE
COMPANY XI through XX; DOES I through
X; and ROE CORPORATIONS XI through
XX, inclusive, joint and severally,

Defendants.

NOTICE OF REMOVAL

Defendant, SMITH'S FOOD & DRUG CENTERS, INC. ("SMITH'S") hereby gives notice of its removal of Case No. A-22-852847-C from the Eighth Judicial District Court, Clark County, Nevada, to this Court. This Notice of Removal is filed pursuant to 28 U.S.C. §§1441(a) and 1446. As grounds for removal, SMITH'S states as follows:

I.
NOTICE OF REMOVAL IS TIMELY

1. On May 19, 2022, Plaintiff BIONCA WALKER, filed this lawsuit against SMITH'S. Pursuant to 28 U.S.C. §1446(a), a complete copy of the state court file, including the Complaint and process, is attached hereto as Exhibit "A".

2. SMITH'S was served with process on or about May 20, 2022. SMITH'S hereby

1 reserves any and all rights and defenses to Plaintiff's Complaint.

2 3. The Complaint filed and served on SMITH'S merely alleged that "By reason of the
3 premises and as a direct and proximate result of the aforesaid negligence and carelessness of the
4 DEFENDANTS, and each of the Defendants, PLAINTIFF was otherwise injured in and about the
5 back, left hip, left knee, right knee, and caused to suffer great pain of body and mind, all or some of
6 the same are chronic conditions which may result in permanent disability and are disabling, all to
7 PLAINTIFF, in an amount in excess of Fifty Thousand Dollars (\$50,000.00)." (Compl. at ¶27).

8 4. Defense counsel learned that the value of this case was sufficient for Federal
9 jurisdiction on June 24, 2022. On that date, Plaintiff filed and served a Request for Exemption from
10 Arbitration in the pending State Court litigation. Therein, Plaintiff alleges that the ". . . total
11 accountable special damages to date, are \$105,414.08 + Pending, . . ." (Pl.'s Request at 3).

12 Upon receiving this information, Defense counsel learned that the "amount in controversy"
13 exceeds the jurisdictional minimum for diversity jurisdiction.

14 5. This Notice of Removal is timely filed under 28 U.S.C. §1446(b), which provides:
15 If the case stated by the initial pleading is not removable, a notice of
16 removal may be filed within thirty days after receipt by the defendant,
17 through service or otherwise, of a copy of an amended pleading,
18 motion, order or other paper from which it may first be ascertained
that the case is one which is or has become removable, except that a
case may not be removed on the basis of jurisdiction conferred by
section 1332 of this title more than 1 year after commencement of the
action.

19 6. The following pleadings have been entered and/or filed in State Court:

- 20 a. Plaintiff's Complaint filed May 19, 2022;
- 21 b. Affidavit of Service of Summons and Complaint filed May 23, 2022;
- 22 c. SMITH'S Answer to Plaintiff's Complaint filed June 9, 2022;
- 23 d. Plaintiff's Request for Exemption from Arbitration was served on
24 June 24, 2022; and
- 25 e. Commissioner's Decision on Request for Exemption was served on
26 July 8, 2022.

27 7. Other than the pleadings discussed above, no further proceedings have taken place in
28 District Court, Clark County, Nevada as of the filing of this notice of removal.

II.**DIVERSITY JURISDICTION EXISTS**

8. This is a civil action over which this Court has original jurisdiction pursuant to 28 U.S.C. §1332. This action may be removed pursuant to 28 U.S.C. §1441, because the amount in controversy exceeds \$75,000, exclusive of interest and costs; the suit involves a controversy between citizens of different states; and none of the properly joined defendants is a citizen of Nevada.

A. The Amount in Controversy Requirement is Satisfied.

9. Plaintiff's Complaint merely alleged that "By reason of the premises and as a direct and proximate result of the aforesaid negligence and carelessness of the DEFENDANTS, and each of the Defendants, PLAINTIFF was otherwise injured in and about the back, left hip, left knee, right knee, and caused to suffer great pain of body and mind, all or some of the same are chronic conditions which may result in permanent disability and are disabling, all to PLAINTIFF, in an amount in excess of Fifty Thousand Dollars (\$50,000.00)." (Compl. at ¶27).

10. In addition to the above, Plaintiff's Request for Exemption from Arbitration served on June 24, 2022 indicated that the "... total accountable special damages to date, are \$105,414.08 + Pending, . . ." (Pl.'s Request at 3).

B. The Parties Are Diverse.

11. The diversity of citizenship requirement is satisfied. SMITH'S is informed and believes that Plaintiff was at the time of her Complaint a citizen and resident of the State of Nevada. (Compl. at ¶1) .

12. SMITH'S was at the time of the filing of Plaintiff's Complaint and is now an Ohio Corporation with its principal place of business in the State of Utah.

III.**REMOVAL TO THIS JURISDICTION IS PROPER**

13. Pursuant to 28 U.S.C. §§1332, 1441, and 1446, removal of the above-captioned state court action to this Court is appropriate.

14. Pursuant to 28 U.S.C. §1441(a), removal is made to this Court as the district and division embracing the place where the state action is pending 28 U.S.C. §108.

15. SMITH'S reserves the right to amend or supplement this Notice of Removal.

17. SMITH'S requests a trial by jury of all issues.

Dated this 22nd day of July, 2022.

Bv /s/ Jerry S. Busby
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 Attorneys for Defendant
 SMITH'S FOOD & DRUG CENTERS, INC.